Supreme Court U.S.
FILED
JAN 24 2003

No. 02-984

In the Supreme Court of the United States

YVETTE PATTON,

Petitioner,

v.

JOSEPH CRAIG LEMOINE AND LOUISIANA FARM BUREAU CASUALTY INSURANCE COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

JOSEPH PAYNE WILLIAMS, SR.
Counsel of Record
WILLIAMS FAMILY LAW FIRM, L.L.C.
162 JEFFERSON STREET
P.O. BOX 15
NATCHITOCHES, LA 71458-0015
(318) 352-6695
(318) 352-6696 FAX

Counsel for Respondents Joseph Craig Lemoine and Louisiana Farm Bureau Casualty Insurance Company

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

14 pp

QUESTION PRESENTED

1.

Did the United States District Court for the Western District of Louisiana and the United States Fifth Circuit Court of Appeals err when they dismissed Petitioner's action holding that federal district courts are courts of original jurisdiction therefore the United States District Court for the Western District of Louisiana lack subject matter jurisdiction to entertain her appeal of a state court final decision under the *Rooker-Feldman* Doctrine.

2.

Was the writ of certiorari filed within ninety days of the denial of discretionary review by the state court of last resort in compliance with Rule 13 of the Rules of the Supreme Court of the United States of America.

3.

Did the Third Circuit Court of Appeal for the State of Louisiana err in its decision regarding Petitioner's expert witnesses?

PARTIES TO THE PROCEEDINGS BELOW

1) Yvette Patton, Plaintiff – Petitioner

2) Joseph Craig Lemoine and Louisiana Farm Bureau Casualty Insurance Company, Defendants - Respondents

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS BELOW ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 2

I. Petitioner's Writ should be denied because the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Western District of Louisiana were correct in holding that federal courts are courts of original jurisdiction and may not review, modify, or nullify final orders of state courts as set forth by the *Rooker-Feldman* Doctrine . . . 2

II. Petitioner failed to file with the Supreme Court of the United States her writ of certiorari within ninety days of the denial of the Supreme Court of Louisiana's discretionary review in contravention of Rule 13(1) of the Rules of the Supreme Court of the United States 4

III. The Third Circuit Court of Appeal for the State of Louisiana did not err in its review of Petitioner's contentions regarding expert witness testimony 5

CONCLUSION 7

TABLE OF AUTHORITIES

Cases

Ferrell v. Fireman's Fund Insurance Company, et al.,
650 So. 2d 742 (La. 1995) 6

Fontenot v. Fontenot,
621 So. 2d 843 (La. App. 3 Cir 1993),
reversed on other grounds 93-2479 (La. 4/11/94);
635 So. 2d 219 5

Liedtke v. State Bar of Texas,
18 F. 3d 315 (5 Cir. 1994) 3

Patton, et al. v. Lemoine, et al.,
776 So. 2d 513 (La. App. 3 Cir. 2000),
writ denied, 789 So. 2d 591 (La. 2001) 1, 5

Patton, et al. v. Lemoine, et al.,
792 So.2d 747 (La. 2001) 4

Weekly v. Morrow,
204 F. 3d 613 (U.S. App. 5. Cir. 2000) 3

Constitutional Provisions, Statutes, Regulations, and Rules

7th Amendment of the Constitution of the
United States of America 5

14th Amendment of the Constitution of the
United States of America 5

28 U.S. C. § 1257 3

Rule 13(1), Rules of the Supreme Court
of the United States . . . . . i, 4, 7

Article 5, Section 10(B) of the Louisiana
Constitution of 1974, as amended 6

STATEMENT OF THE CASE

Yvette Patton (hereafter "Petitioner") in the current matter filed a suit for damages stemming from an automobile accident in Louisiana state district court against Joseph Craig Lemoine and Louisiana Farm Bureau Casualty Insurance Company (hereafter "Respondents"). Petitioner was awarded damages at the trial court level and the matter proceeded through the Louisiana appellant courts. Patton, et al. v. Lemoine, et al., 776 So. 2d 513 (La. App. 3 Cir. 2000), *writ denied*, 789 So. 2d 591 (La. 2001).

Thereafter, Petitioner filed a so-called "Original Appeal" with the United States District Court for the Western District of Louisiana. Respondents filed a Motion to Dismiss urging the United States District Court for the Western District of Louisiana lacked subject matter jurisdiction to hear an appeal from the denial of Petitioner's writ by the Supreme Court of Louisiana. Magistrate Judge Payne approved of the Motion to Dismiss in his Report and Recommendation. On January 18, 2002, the United States District Judge Walter approved of Magistrate Judge Payne's Report and Recommendation and granted the Respondents' Motion to Dismiss.

Petitioner then filed an appeal of District Judge Walter's decision with the United States Court of Appeals for the Fifth Circuit. In an unpublished per curiam opinion, Circuit Judges Higginbotham, Wiener, and Barksdale on July 19, 2002, affirmed the United States District Court for the Western District of Louisiana dismissing the appeal of Petitioner.

Petitioner has now filed a writ of certiorari to the United States Supreme Court seeking reversal of the United

States Court of Appeals for the Fifth Circuit, the United States District Court for the Western District of Louisiana, the Third Circuit Court of Appeal for the State of Louisiana and the Supreme Court of Louisiana.

REASONS FOR DENYING THE WRIT

I. Petitioner's writ should be denied because the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Western District of Louisiana were correct in holding that federal courts are courts of original jurisdiction and may not review, modify, or nullify final orders of state courts as set forth by the *Rooker-Feldman* Doctrine.

Petitioner claims that the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Western District of Louisiana have erred in their application of the *Rooker-Feldman* Doctrine. Petitioner misconstrues the *Rooker-Feldman* Doctrine by claiming that it only applies in situations where the state court's decision was not reversed or modified at the state appellate level. Petitioner claims that because the Third Circuit Court of Appeal for the State of Louisiana reversed in part the District Court's opinion that the *Rooker-Feldman* Doctrine is no longer applicable and as such the United States District Court for the Western District of Louisiana has subject matter jurisdiction to hear Petitioner's "Original Appeal."

Respondents contend that Petitioner's "Original Appeal" clearly falls within the scope of the *Rooker-Feldman* Doctrine and as such the United States District Court for the Western District of Louisiana clearly did not have subject matter jurisdiction and properly dismissed Petitioner's appeal.

The Fifth Circuit in Weekly v. Morrow, 204 F. 3d 613 (U.S. App. 5. Cir. 2000).

> No statute exists, however, granting federal district court's jurisdiction to hear appeals from state court decisions. 28 U.S. C. § 1257 provides that 'final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by Writ of Certiorari....' No parallel provision exists similarly granting appellate jurisdiction over state court decisions to the inferior federal courts. The Supreme Court has definitively established, in what has become known as the *Rooker-Feldman* Doctrine, that 'federal district courts, as courts of original jurisdiction, lack Appellate jurisdiction to review, modify, or nullify final orders of State Courts.' [*citing* Liedtke v. State Bar of Texas, 18 F. 3D 315, 317 (5 Cir. 1994).]

In Weekly, the Fifth Circuit further stated, "If a state court errs the judgment is not void, it is to be reviewed and corrected by the appropriate state appellate court. Thereafter, recourse at the federal level is limited solely to an application for writ of certiorari to the United States Supreme Court. [*citing* Liedtke.]"

Petitioner has urged her claim at each level of Louisiana state court system. She then turned to the lower federal courts seeking reversal of the Louisiana state courts decisions. However, these courts lacked subject matter jurisdiction as they do not sit as appellate courts in review of

state court judgments. Petitioner's argument to the contrary is without merit.

II. Petitioner failed to file with the Supreme Court of the United States her writ of certiorari within ninety days of the denial of the Supreme Court of Louisiana's discretionary review in contravention of Rule 13(1) of the Rules of the Supreme Court of the United States.

Petitioner's request for rehearing was denied by the Supreme Court of Louisiana on May 25, 2001, at Patton, et al. v. Lemoine, et al., 792 So.2d 747 (La. 2001).

According to Rule 13(1), in pertinent part, "A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review."

Petitioner did not file a writ of certiorari with the Supreme Court of the United States seeking review of the judgment by the Third Circuit Court of Appeal for the State of Louisiana until after 90 days had passed. The Supreme Court of Louisiana, on May 25, 2001, denied a request for reconsideration of an earlier writ denial. On October 17, 2002, Petitioner filed a writ of certiorari with the Supreme Court of the United States. Clearly more than 90 days have passed since the state court of last resort denied discretionary review of Petitioner's claims. No application for an extension of time under Rule 13 has ever been filed and no extraordinary circumstances for such an extension exist. As such, the writ should not be reviewed by this Court.

III. The Third Circuit Court of Appeal for the State of Louisiana did not err in its review of Petitioner's contentions regarding expert witness testimony.

Petitioner claims in her writ application that the Third Circuit Court of Appeal for the State of Louisiana, "did not reach the merits of [Petitioner's] claim concerning the dismissal of two expert witnesses, Dr. Carol Aby, an economist, and Dr. Richard Galloway, a vocational rehabilitation expert."[1] [2] [3] In regards to Dr. Galloway's testimony, the Third Circuit found that Petitioner failed to proffer Dr. Galloway's testimony and as such it was not preserved as evidence for appellate purposes. "Ms. Patton did not proffer Dr. Galloway's testimony, so we have no way of knowing what his testimony would have been. Accordingly she is precluded from complaining that his testimony was excluded. Fontenot v. Fontenot, 621 So. 2d 843 (La. App. 3 Cir 1993), reversed on other grounds 93-2479 (La. 4/11/94); 635 So. 2d 219." Patton, et al. v. Lemoine, et al., 776 So. 2d 513, 516 (La. App. 3 Cir 2000). Concerning, Dr. Aby, Petitioner failed to call him as a witness or proffer his testimony in any manner and as such she did not have a right on appeal to the Third Circuit to raise this issue. "With regard to Mr. Aby, Ms. Patton did not call

---

[1] Petitioner alleges that res judicata does not apply to the instant matter. She fails to cite any authority as to why she is correct. The Third Circuit Court of Appeal for the State of Louisiana clearly ruled on every issue that was raised concerning expert witness testimony and therefore res judicata certainly applies.

[2] Petitioner also alleges the state court violated certain Federal Rules of Civil Procedure. Louisiana state courts follow the Louisiana Code of Civil Procedure and are not bound by the Federal Rules of Civil Procedure.

[3] Petitioner alleges but fails to explain how her 7th and 14th Amendment rights have been violated.

him as a witness to the trial, and there is no evidence in a pre-trial ruling by the trial court regarding him as a trial witness. Accordingly, there is nothing for us to review. This assignment is without merit." *Id.* at 516.

Clearly the Third Circuit Court of Appeal for the State of Louisiana did rule as to the merits of Petitioner's allegations of error in regards to the testimony of Dr. Galloway and Dr. Aby. The Supreme Court of Louisiana denied her writs and as such is a final judgment and under the *Rooker-Feldman* Doctrine the lower federal courts lacked subject matter jurisdiction to hear Petitioner's appeal as to this matter.

Article 5 Section 10(B) of the Louisiana Constitution of 1974, as amended, states, in pertinent part, "except as limited to questions of law by this constitution, or as provided by law in the review of administrative agency determinations, appellate jurisdiction of a court of appeal extends to law and facts." Petitioner incorrectly states that the Third Circuit Court of Appeal in the State of Louisiana failed to properly review the trial court's decision. Petitioner for support of her argument cites Ferrell v. Fireman's Fund Insurance Company, et al., 650 So. 2d 742 (La. 1995). However, Ferrell does not stand for the proposition that every state trial court decision must be reviewed in its entirety by the appellate courts. Rather, only when a reversible error of law or manifest error of material fact has occurred shall the court of appeal review the facts de novo from the entire record and render a judgment on the merits. *Id.* at 745.

The Third Circuit Court of Appeal for the State of Louisiana correctly reviewed Petitioner's assignments of error as to expert witnesses and found no error on the part of the trial court. As such, no review of the record in its entirety

was mandated by either the Louisiana constitution or Louisiana jurisprudence.

CONCLUSION

Petitioner seeks to have a state appellate court opinion reviewed, modified or nullified in contradiction of the *Rooker-Feldman* Doctrine. Petitioner did not file her writ of certiorari in compliance with Rule 13 nor did she file a motion for an extension of time to file her writ. Even if a federal district court were to have subject matter jurisdiction over this matter, the Third Circuit Court of Appeal for the State of Louisiana did not err in its analysis of Petitioner's assignments of error in her appeal from the state trial court.

WHEREFORE, the Respondents pray that this Court deny Petitioner's writ of certiorari as to all issues raised and dismiss her "Original Appeal" at her costs and any other remedies in equity or law that are allowed Respondents.

Respectfully submitted,

JOSEPH PAYNE WILLIAMS, SR.
Counsel of Record
WILLIAMS FAMILY LAW FIRM, L. L. C.
162 Jefferson Street
Post Office Box 15
Natchitoches, LA 71458-0015
Telephone: (318) 352-6695
Facsimile: (318) 352-6696

Attorney for Respondents
JOSEPH CRAIG LEMOINE and
LOUISIANA FARM BUREAU CASUALTY
INSURANCE COMPANY